



County of Los Angeles
CHIEF ADMINISTRATIVE OFFICE

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DAVID E. JANSSEN
Chief Administrative Officer

April 7, 2006

To: Mayor Michael D. Antonovich
Supervisor Gloria Molina
Supervisor Yvonne B. Burke
Supervisor Zev Yaroslavsky
Supervisor Don Knabe

From: David E. Janssen
Chief Administrative Officer

Board of Supervisors
GLORIA MOLINA
First District

YVONNE B. BURKE
Second District

ZEV YAROSLAVSKY
Third District

DON KNABE
Fourth District

MICHAEL D. ANTONOVICH
Fifth District

SACRAMENTO UPDATE

Pursuit of County Position on Legislation

AB 573 (Wolk), as amended on January 5, 2006, would authorize a public agency to require that a design professional indemnify, defend, or hold harmless the public agency, or its officers and employees, or both, from liabilities, damages, losses, and costs only to the extent they were caused by the negligence, recklessness, or willful misconduct in the performance of an agreement or contract entered into on or after January 1, 2007. Except as provided above, AB 573 would prohibit the public agency from requiring the design professional to defend, indemnify, or hold harmless the public agency or its officers and employees from any claim, action, or proceeding against the public agency.

The Department of Public Works (DPW) indicates that they hire many Architectural Engineering (A/E) firms to provide design services and that current contracts require these firms to indemnify and defend DPW and the County from claims and damages involving the alleged acts or omissions of the consultant. DPW indicates that AB 573 would reduce the defense and indemnity obligations of A/E firms and potentially relieve them of the obligation to defend the County from any claim or suit involving allegations that acts or omissions of the consultant caused damages, and would make design professionals liable only for "negligent acts and omissions." This is a higher standard than provided for in existing contracts and may require the County to pay for the defense cost even in cases where it is later proven that damages flowed from the A/E's negligence.

DPW indicates that in many of these cases to determine liability, there is often a gray area where the A/E may indeed be responsible or at fault for the problem, but where the act or error arguably does not rise to the level of professional negligence. The disagreement with the A/E would now likely be over whether the professional negligence standard was actually proven at trial, versus the existing standard where DPW must only show that a complaint alleges that damages flowed from the A/E's actions, irrespective of negligence. **DPW recommends that the County oppose AB 573, and we concur.**

Opposition to AB 573 is consistent with existing policy to oppose AB 1839 (Campbell) of 2002, a substantially similar bill which limited the scope of indemnity provisions that local agencies can require of design professionals in agreements or contracts. **Therefore, our Sacramento advocates will oppose AB 573.** This measure is currently in the Senate Judiciary Committee and there is no registered support or opposition.

AB 802 (Wolk), as amended on January 23, 2006, would require local governments to include flood management in the conservation and safety elements of their general plans. Among other requirements, general plans must include a conservation element for the conservation, development, and utilization of natural resources and a safety element for the protection of the community from any unreasonable risks associated with the effects of any number of natural or unnatural hazards.

AB 802 would require a city or county, after January 1, 2007, to include flood management in the conservation and safety elements of their general plans upon adoption or revision of the general plan, the amendment of the conservation or safety elements, or the amendment of two or more other elements of the general plan. The amended conservation element must: 1) include a flood management component that considers existing water supply and possible use of flood water to supplement that supply, and potential means of using flood water to recharge groundwater supplies; and 2) require mapping of flood hazards in the safety element of a general plan after the maps have been made available and when either the safety element is amended or two or more general plan elements are amended.

The amended safety element must include an assessment of: 1) the risk to life and property from "reasonably foreseeable flooding", defined as flooding that has a one in two hundred chance of occurring in any given year; 2) the local flood and water supply infrastructure and an analysis of how the infrastructure can be designed or altered to minimize the risk of flooding; 3) how the safety element will be coordinated with the general plan's land use element; 4) coordination with State and local agencies involved in flood management issues; 5) planning for effective storm water retention and

drainage; and 6) anything else deemed necessary to implement effective flood management and public safety.

DPW estimates that it would cost the department \$30 million to conduct the hydrology and hydraulic studies needed to produce the 200-year flood maps for the entire County and that the department's existing Flood Fund is already strained from the increasing operational and maintenance needs of the flood control system and Clean Water Act mandates on the system. In addition, DPW indicates that the passage of Proposition 218 imposed severe limitations on the department's ability to raise Flood Control District Assessments to cover rising costs, and since the constraints on assessments were imposed by the voters, AB 802 cannot be amended to circumvent those constraints. Furthermore, DPW indicates that although the bill specifies that the costs of these mandates would be reimbursed, the outlook for mandate reimbursement for flood control is unpredictable. **Therefore, DPW recommends that the County oppose AB 802.**

The Department of Regional Planning (DRP) indicates that they are currently drafting a General Plan Update, which is tentatively scheduled for adoption after January 2007 and, although part of the update includes assessments of the County's flood hazard and water supply management, a few of AB 802's provisions would require DRP to undertake significant additional general plan analysis, and possibly mapping. DRP indicates that the County's current flood hazard planning efforts by DRP and DPW are based on 100-year flood hazard mapping previously provided to, and currently being updated, by the Federal Emergency Management Agency. However, AB 802 requires a 200-year flood hazard mapping and does not specify that the State, rather than the counties, would be charged with generating such mapping.

In addition, DRP indicates that AB 802 would require at least two new major studies of flood management and water supply infrastructure, which would delay adoption of the County's updated General Plan. DRP is also concerned that all of the bill's new general plan requirements would be imposed if only two of the County's General Plan elements were amended. As a result, if one element such as the Housing Element was to be amended, which also required corresponding amendments to the Land Use Element, then the bill's new general plan requirements would come into play, and **therefore, DRP also recommends that the County oppose AB 802.**

Opposition to AB 802 is consistent with existing County policy to oppose unfunded mandates and legislation that infringes upon county board of supervisors' local land use decision-making authority. **Therefore, our Sacramento advocates will oppose AB 802.** This measure passed the Assembly Floor on January 26, 2006, by a vote of 41 to 34, and is currently in the Senate Local Government Committee awaiting a hearing date.

AB 802 is supported by the: Planning and Conservation League, League of Women Voters of California, East Bay Municipal Utility District, and the Sierra Club, California Chapter. The bill is opposed by the: California Building Industry Association, California Chapter of National Association of Industrial and Office Properties, California Chamber of Commerce, and Resources Landowners Association.

Status of County-Interest Legislation

County-supported AB 1799 (Umberg), which would restore prior statutes requiring the State to pay for the costs of special elections to fill vacancies in the Legislature, the U.S. Senate or the House of Representatives, was placed on the Assembly Appropriations Committee Suspense File on April 5, 2005. The measure would apply to special elections occurring after January 1, 2006, and will be considered when the Committee takes up all measures on the Suspense File in May.

County-supported AB 1982 (Bass), which would extend eligibility in the Kinship Guardianship Assistance Program to wards of the juvenile court, was placed on the Assembly Appropriations Committee Suspense File on April 5, 2006. AB 1982 will be considered when the Committee takes up all measures on the Suspense File in May.

County-supported AB 2161 (Hancock), which would establish the Unified Resource Families Assessment Pilot Project and create a unified, child-centered resource family approval process to replace the current multiple step process for licensing foster homes, passed the Assembly Human Services Committee on April 4, 2006 by a vote of 6 to 0, and now proceeds to the Assembly Appropriations Committee.

County-supported AB 2193 (Bass and Cohn), which would require the State to change the methodology for budgeting caseload standards for the child welfare program, passed the Assembly Human Services Committee on April 4, 2006 by a vote of 6 to 1, and now proceeds to the Assembly Appropriations Committee.

County-sponsored AB 2961 (Nuñez), which would enhance CalWORKs benefits for homeless CalWORKs families and assistance for CalWORKs families at imminent risk of homelessness, was amended in the Assembly Human Services Committee on April 4, 2006. The amendments would; limit the payment of rent in arrears to prevent eviction to two months, exclude the value of food stamp benefits in calculating permanent housing assistance, and clarify that families who receive a notice to pay rent or quit shall be considered homeless for purposes of receiving assistance to prevent homelessness. With these amendments, AB 2961 passed the committee by a vote of 6 to 1, and now proceeds to the Assembly Appropriations Committee.

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County-sponsored SB 699 (Soto), which would change California's HIV reporting system from code-based to name-based, passed the Senate Floor on April 6, 2006 by a vote of 32 to 0, and now proceeds to the Governor.

County-opposed unless amended SB 1206 (Kehoe), which would change the definition of blight and make a number of other changes to redevelopment law, passed the Senate Committee on the Judiciary on April 4, 2006. Voting for the bill were Senators Dunn, Kuehl and Escutia. No Committee members were recorded as voting "No." Senator Escutia made a point of saying that she was casting a "courtesy vote" because she had heard objections to the bill from a number of her cities. She also said that she reserved the right to oppose the bill on the floor. Senator Kehoe and her staff remain willing to work with the County on amendments that will remove our objections to the bill. The bill will next be heard in the Senate Committee on Appropriations.

County-supported SB 1596 (Runner), which would establish the Nurse-Family Partnership Program and make grants available to counties to provide voluntary visiting nurse services to first-time pregnant low-income mothers, their children, and their families, passed the Senate Health Committee on April 5, 2006 by a vote of 7 to 0, and now proceeds to the Senate Appropriations Committee.

We will continue to keep you advised.

DEJ:GK
MAL:JF:JGR:cc

c: All Department Heads
Legislative Strategist
Local 660
Coalition of County Unions
California Contract Cities Association
Independent Cities Association
League of California Cities
City Managers Associations